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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: [Redacted] Office: Vermont Service Center

Date:

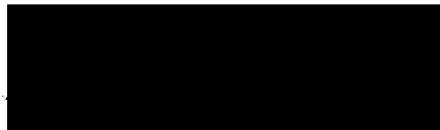
AUG 26 2003

IN RE: Petitioner:  
Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant visa petition was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. § 1153(b)(4), to perform services as a pioneer and deacon on a part-time voluntary basis.

The director denied the petition, finding that the beneficiary's claimed service with the petitioner did not satisfy the requirement that he had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition. The director also determined that the petitioner had failed to establish that the beneficiary would be a full-time religious worker in the proffered position, and that the beneficiary would not be solely dependent upon supplemental employment or solicitation of funds for his financial support.

On appeal, counsel for the petitioner asserts that: (1) the beneficiary has been, and still is, a full-time minister according to the requirements set forth by the world headquarters of Jehovah's Witnesses; (2) the beneficiary works more than the 70 hours mentioned in the evidence previously submitted; (3) Jehovah's Witnesses imitate strictly the early Christian congregation in having self-supporting ministers; and, (4) the laws and their interpretations should not create an entanglement with a religion or encourage unequal treatment of religions. In support of the appeal, counsel submits documentation concerning the Jehovah's Witnesses pioneer program.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The beneficiary, a native and citizen of Nigeria, is self-petitioning as a member of the Clarendon Congregation of Jehovah's Witnesses in Brooklyn, New York. The beneficiary last entered the United States as a nonimmigrant visitor on July 28, 1990, with permission to remain until July 27, 1991. He has apparently resided in the United States unlawfully since the expiration of his authorized period of admission. The petition (Form I-360) indicates that the beneficiary has not been employed in the United States without Bureau permission.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must establish each of several eligibility requirements.

The first issue to be examined in this proceeding is whether the petitioner has established that the beneficiary has had the requisite two years of continuous work experience in the proffered position.

Regulations at 8 C.F.R. § 204.5(m)(1) state, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 9, 2001. Therefore, the petitioner must establish that the beneficiary has been continuously engaged in a religious occupation for the two-year period beginning on June 9, 1999.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at Section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately proceeding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" is also discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious studies. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm. 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To be otherwise would be outside the intent of Congress.

The record indicates that the beneficiary has been a member of the Clarendon Congregation of Jehovah's Witnesses since March 1993, and that he was issued a pioneer service identification card on September 1, 1997. His services as a pioneer and deacon have been performed on a part-time volunteer basis. Since at least 1999, the beneficiary has been employed in a secular job as a biology lab specialist for the City of New York public school system. For the reasons discussed above, the beneficiary's services as a pioneer and deacon with the Jehovah's Witnesses do not constitute continuous experience in a religious occupation. Therefore, the

petition may not be approved.

The petitioner must also demonstrate that a qualifying job offer has been tendered.

Regulations at 8 C.F.R. § 204.5(m)(4) state, in pertinent part, that:

*Job offer.* The letter from the authorized official of the religious organization in the United States must state how the alien will be solely carrying on the vocation of a minister, or how the alien will be paid or remunerated if the alien will work in a professional capacity or in other religious work. The documentation should clearly indicate that the alien will not be solely dependent on supplemental employment or the solicitation of funds for support.

The record does not contain a qualifying job offer. For this reason, as well, the petition may not be approved.

Beyond the decision of the director, the petitioner has also failed to establish that the petitioner is a qualified religious organization; the beneficiary is qualified to engage in a religious vocation or occupation; the beneficiary's activities for the petitioning organization require any religious training or qualifications; and, the position offered by the petitioner is a qualifying religious vocation or occupation. Since the appeal will be dismissed for the above reasons, these issues need not be examined further at this time.

In reviewing an immigrant visa petition, the Service must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966). Inherently, the Service must consider that the possible rationale for the instant petition is the petitioner's desire to assist him-self in remaining in the United States for purposes other than provided for under the special immigrant religious worker provisions.

While the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests with the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.